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ABSTRACT

Laws regarding Ontario teachers' collective bargaining have implications for continuing education. "Continuing education" here means a system of education that serves everyone irrespective of age and to which access at any time is a right. Teacher collective bargaining laws are important in a system of continuing education because these laws mandate who teachers will be and how they will be employed. In Ontario, the "Teachers' Negotiations Act" controls collective bargaining for teaching staff in tax-financed schools. "An Act Respecting Collective Bargaining for Colleges of Applied Arts and Technology" controls labor relations in community colleges, and "The Labour Relations Act" governs academic staff negotiations in universities. The concern here is with the implications of all three acts for the operation and growth of an educational system that provides access to learning resources for all members of society. The principal issues arising from all three acts are the impact of adversarial forms on previously collegial systems; the possible need for the inclusion of all immediately interested parties in negotiations; the tension between students' freedom to choose courses offered and teacher job security; and the application of precise job descriptions and workloads in an area like education where such things were previously undefined and flexible.
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TEACHERS' COLLECTIVE BARGAINING IN ONTARIO: AN INTRODUCTION

U.S. DEPARTMENT OF HEALTH
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Third Publication in the Series

THE INTERACTION OF LAW AND EDUCATION

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DEPARTMENT OF ADULT EDUCATION
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FOREWORD

The purpose of this series of publications, of which this is the third, is to examine the legal implications, or the implications for law in general, of slowly emerging systems of continuing education. Despite the confusion in terminology attending this emergence, in this case "continuing education" is taken to mean a system or interlocking systems of education which provide for all, irrespective of age, and to which intermittent access is a right, it seems quite apparent that no modern society can or should try to survive without some version or versions of such a system. This fact alone makes an exploration of existing or potential legal issues desirable.

Because of the essential "continuity" it became apparent to us early in our examination that we could not restrict our activities to law affecting that portion of the system relating to adults. Just as attitudes and practices gained from a century of preoccupation with the education of the young spill over into adult education, so provisions already in laws largely directed to the education of the young begin to be applied to adult education. In our previous publication, "Attendance at School in Ontario - The Right and the Duty", we pointed out that the Education Act in Ontario, designed primarily for the education of the young has important consequences for adults wishing to obtain access to schools and programs.

The area under investigation in this publication shows more evidence of the need for the law to take account of emerging institutions and groups of individuals concerned with the education of new groups of people in the society. While the universities remain under the jurisdiction of labour

relations legislation designed for industrial production and other services, the government has seen fit to introduce special labour legislation to regulate the employment of two groups providing educational services, elementary/ secondary school teachers, and teachers in Colleges of Applied Arts and Technology. That form of discrimination in itself provokes a question as the pamphlet points out, but there are many others.

Our first concern then, after exploring the meaning of the special legislation as clearly as we could, was to ask in what way such legislation reflects the fact that it is education that is the service in question. If legislation designed for industrial production and the provision of other services is not sufficient to regulated educational services, as appears to be the case, then what are the specific differences that must be taken into account, and in what way do they reflect the special characteristics of educational endeavour ? There are no simple answers to these questions, but we have tried in the body of the pamphlet to describe the differences, and at least raise the questions. For example, it does appear that the difference in certification practices displayed by The School Boards and Teachers Collective Bargaining Act, 1975 and An Act Respecting Collective Bargaining for Colleges of Applied Arts and Technology, with the much greater flexibility found in An Act Respecting Collective Bargaining for Colleges of Applied Arts and Technology, do reflect the presence of adult students in the Colleges, and the more complex relationships between teachers, students, subject matter, and security to be found in those institutions. Does that then suggest that the retention of the Labour Relations legislation for the universities merely reflects an even greater complexity with respect to the freedom to learn that is found there ?

What one hopes to find as time indicates the validity of this legislation is that, because these Acts govern education and reflect something of the importance of learning and its protection in the society, they will be found to have contributed to the entire spectrum of labour relations in the province. Only time and consistent evaluation, of the sort not engaged in up until now, will provide the answer.

Legislation in this area, whether it intends to be or not, is a major factor in establishing and regulating who a society's teachers will be. Every society has and exercises a legitimate right to such determination. When it is primarily a concern with children, compelled to attend schools and programs that are themselves determined by public consensus, the problem of defining who are teachers is of one order. In this case, no one is a teacher unless employed by a public authority to perform a publicly defined task. When, however, one moves to the area of adult education, where teaching and learning occur in a great variety of settings and circumstances, then the problem becomes one of quite another order. It is assertable that the freedom to learn implies a commensurate freedom to teach. Further, one is entitled to ask what the relationship is between the freedom to teach and access to publicly provided facilities which make such teaching possible. How free in fact is that access made in the legislation in question. A recent development in the province of Manitoba, where the university faculty appear to have won an agreement which is prejudicial to the interests of part-time instructors, focusses the issue clearly. Shall the security of full-time teachers limit the ability of the university to take advantage, on a part-time basis, of skills and knowledge in the general community that no full-time faculty can possibly include ? The

very success of higher education in Canada has meant the increase in numbers of well-educated individuals who prefer to find their careers outside the teaching institutions but whose training and ongoing experience gives them the itch to teach without wishing to be "teachers". Since it is an irresistible itch, if they are denied access to formal teaching institutions they will simply set up informally somewhere and we shall find ourselves with two systems of adult education, one official and one unofficial. Neither the security of institutional staff which, of course, must reasonably be provided for, nor the interests of the society will be served by such development on a large scale. We shall have to pay close attention to the need for both security and flexibility in providing the widest possible contact between teachers and students of all kinds.

The pamphlet also speculates on the segregating implications of the legislation. Can the necessary freedom of students to move easily backwards and forwards between the systems represented be possible if the teachers are locked inescapably into one system or the other. Lack of mobility for teachers will surely begin to bring about the same immobility among the students and reduce, if not eliminate, desireable continuity.

Our opinion thus far, is that these new Acts were both necessary and inevitable. Our main concern is that close attention to their specific nature and effects should be maintained, an attention that must come from both educators and legal personnel. It is to this end that this series of investigations is addressed.

This pamphlet is the result of the work of Elliot Allen and John Stockwell under the direction of Dr. Alan Thomas, Project Director.

Part I

1. Introduction

This paper will attempt to give a brief introduction to the law governing teachers' labour relations in Ontario. In the context of our concern for continuing education a few of the major issues in this field will be discussed. Following this each of the three pieces of legislation controlling collective bargaining in the educational context will be examined. Rather than proceeding from section to section through the Acts, the Acts will be looked at in terms of the main questions they attempt to answer; who bargains, how do they proceed, and so on. Finally, by way of conclusion, some of the questions provoked by the manner in which the legislature has dealt with this area will be considered. To assist the reader, a Glossary of Terms will be found in Appendix I and terms will be footnoted when first used. Relevant sections of The School Boards and Teachers Collective Bargaining Act, 1975 (1) (formerly Bill 100 of 1975) and of An Act Respecting Collective Bargaining for Colleges of Applied Arts and Technology (2) (formerly Bill 108 of 1975) will be found in Appendix II.

2. Legislative Background

There are three pieces of legislation affecting teachers bargaining rights which are all provincial in origin. These three pieces of legislation govern three different groups of teaching personnel; university, community college and elementary and secondary school teachers. Under the B.N.A. Act

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(1) S.O. 1975, C.72, hereinafter referred to as the "Teachers' Negotiations Act".

(2) S.O. 1975, C.74, hereinafter referred to as the "Community Colleges Bargaining Act".

the provinces rather than the federal government are the competent law makers both in the field of contracts (3) and that of education. (4)

The "Teachers' Negotiations Act", controls collective bargaining for teaching staff only in the tax-financed primary and secondary schools in the province, both "public" and "separate". This Act provides a legislative means for teachers and school boards to arrive at agreement on remuneration and conditions of work and, in the case of failure to agree, provides a series of complex mechanisms including strikes and lockouts for resolving differences. Such elements as timing, fact finding and a special Education Relations Commission appear to be unique to this piece of legislation. This Act is the first attempt by legislation to apply procedures of collective bargaining to educational institutions.

An Act Respecting Collective Bargaining for Colleges of Applied Arts and Technology (5) controls labour relations in the community colleges for both academic and support staff. This Act is similar to the "Teachers' Negotiations Act" in structure but there are a few major differences which will be dealt with in detail.

The Labour Relations Act (6) remains the sole legislation governing labour relations between academic staff and the administration of the universities. This legislation was designed with industry in mind and the expertise of the tribunal that operates under the Act, the Ontario Labour Relations Board, has developed accordingly. It is interesting to note that the government decided

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(3) British North America Act, 1867 S.92(13)

(4) Ibid., S.93

(5) See Footnote (2) previous page

(6) R.S.O. 1970, C.232

that university labour relations should be governed by the Labour Relations Act while the labour relations of elementary and secondary school teachers, as well as those of teachers in the community colleges, are governed by special legislation. The main difference is that in the "Teachers' Negotiations Act" and the "Community Colleges Bargaining Act" more control is exercised by a very specialized commission. For whatever reason the government seems to consider the situation at the university level less crucial than at the other levels.

3. Strikes and Lock-Outs

Possibly the greatest concern in the educational field is the right of teachers to strike. The right of an individual or group not under contract to withdraw their services can be seen as an indispensible prerequisite to effective collective bargaining. These Acts for the first time legitimize the right of teachers to strike and the right of Boards to lock out teachers. The major focus of public attention has been around these strategies. This focus of attention is the case because unique to educational labour relations is the right of a third party, the student, to an education.

The other horn of the dilema is the right of students to an education. Students of any age in elementary schools and in high schools have a statutory right to instruction while post secondary students may be said to acquire that right by contract.

This conflict is manifest in law, in that, on the one hand The Education Act [7] assigns a duty to the trustees to provide instruction to certain classes of individuals, who can thus be said to have a "right" to that instruction. The common law and our democratic traditions on the other hand

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(7) S.O. 1974, C.109

militate heavily against forcing someone not under contract to work. The law will not, for example, force a person to complete his duties under a contract of employment. If someone is under contract the employer can only sue for damages for refusal to work.

While this matter seems less crucial in the post secondary settings, all three Acts prohibit workers under contract to strike, control the process by which legal strike action may be taken, attempt a balance of power with lock-out provisions, and provide many alternatives for conflict resolution.

Another crucial matter at all levels is the scope of negotiations. The "Teachers' Negotiations Act" does not open the scope of negotiations, but makes it necessary in specific instances to decide whether a particular matter is a term or condition of employment and secondly, if it is, then is it a matter of educational policy that the Board is required by statute to decide ? Elementary and secondary school teachers may feel that all such matters of policy directly affect conditions of work, and in any case, that the teachers being the experts in the field of education have the right to decide. However, in such a case, according to "the Act" the final decision rests with the Board.

Part II - The Teachers Negotiations Act

1. Introduction

The purpose of this Act [8] is "the furthering of harmonious relations between Boards and teachers by providing for the making and renewing of

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(8) All references to "the Act" in Part II means the Teachers' Negotiations Act.

agreements and by providing for the relations between Boards and teachers in respect of agreements." (9)

Transitional provisions exist for negotiations begun before "the Act" became law, and it applies exclusively to the making of all agreements between teachers and school boards since its proclamation. "The Act" precludes the operation of the Statutory Powers Procedure Act and the Arbitrations Act in this field as these Acts provide their own schemes for arbitration and procedure which the government felt were incompatible with the scheme of the "Teachers' Negotiations Act" and the "Community Colleges Bargaining Act".

The administration of "the Act" is the responsibility of the Ministry of Education. "This Act" is perhaps the most important of the three pieces of legislation to be considered simply because of the number of people it affects, both directly and indirectly. In the public and secondary schools 100,000 teachers and 2 million students are affected, as well as the parents of such students. This may be compared to 6,000 professors and 210,000 students in the community colleges and 11,458 professors and 221,000 students in the universities. A strike or a lock-out can disrupt a community of any size. No doubt these factors had some effect on the decision of the Ontario government to tailor-make a statute for this situation.

Rather than proceeding section by section, we will consider "the Act" in terms of the major questions one might ask about its operation. First, however, it might be best to outline very quickly the operation to give a context for discussion of particular aspects.

Negotiations take place at the local level between Boards of Trustees and Branch Affiliates of teachers. One party serves the other with notice of desire to negotiate. They meet and bargain "in good faith" and this is

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(9) See Footnote (1) S.2

so even if an impasse is reached and the parties refuse to concede other or further points. Assistance from the Education Relations Commission may be had at any time. When a true impasse is reached however, agreement can be assisted by use of a "fact-finder", by voluntary binding arbitration, or by final offer selection. The parties may bargain about "any term or condition of employment put forward by either party". (10) One side, the teachers, have restricted powers of strike, while the other, the Board, has restricted powers of lock-out. Agreements must contain certain terms as set out in "the Act". The Commission oversees the process and has appropriate powers and duties.

2. Bargaining

Unlike the other two levels, the official representative of the employees in this situation is fixed by law. All, or virtually all school teachers in Ontario must belong to the Ontario Teachers' Federation. This is decreed by the Teaching Profession Act. (11) In addition, each teacher may belong to an Affiliate Organization, such as L'Association des Enseignan Franco-Ontariens, The Federation of Women Teachers' Association of Ontario, The Ontario English Catholic Teachers' Association, The Ontario Public School Men Teachers' Federation, or The Ontario Secondary School Teachers' Federation. That group of employees of a particular Board who all belong to a particular Affiliate constitute a bargaining unit. There are provisions for joint bargaining involving a multiplicity of Branch Affiliates, as the bargaining units are called, and Boards.

Each school district elects one or more Boards of Trustees to look after the schools in the district. A district may elect a Board to govern the

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(10) Ibid., Footnote (7), S.9

(11) R.S.O. 1970, C.

secondary schools and another Board to govern the elementary schools. These jurisdictions may be confided to one Board responsible for governing both the elementary schools and the secondary schools in the district. Further, there may be created in the district Boards for Roman Catholic separate schools and Protestant separate schools. Trustees are elected representatives and in this regard are responsible to the taxpayers for the cost and quality of education. The individual Boards are controlled to a degree by the Ministry of Education by course guidelines and in some circumstances by budget ceilings. The Boards may belong to associations which are L'Association Francaise des Conseils Scolaires de l'Ontario, Northern Ontario Public and Secondary School Trustees' Association, Ontario Separate School Trustees' Association, or to the Ontario School Trustees' Council, which is the umbrella organization for the previous four groups. Individual Boards may be assisted in negotiations by these groups.

Thus the basic bargaining situation is that the representatives of the local Board of Trustees are on one side of the table and the representatives of the local Branch Affiliate are on the other.

a) General

Leaving transitional provisions aside "the Act" [12] requires that if one party gives the other notice of a desire to negotiate a new agreement in January of the year of expiry, the parties must meet within thirty days of such notice, bargain "in good faith" [13] and make "every reasonable effort"[14]

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(12) The Education Act, S.12(1)

(13) Ibid.

(14) Ibid.

to reach agreement. If no such notice is given, the existing agreement is taken as renewed for one year from August 31st in the year in which notice is given. Although highly unlikely, such automatic renewal could continue indefinitely.

At any point in the negotiations the parties may request assistance from the Commission in the role of mediator. If an impasse is reached, the parties may agree to submit their differences to an individual or Board for binding arbitration.

b) The Fact-Finder

The Commission is required to appoint a fact-finder if the matters in negotiation have not been referred to arbitration or a selector and a) one or both of the parties give notice to the Commission that one impasse has been reached, b) the Commission is of the opinion that an impasse has been reached or c) the agreement between the parties that was in operation expires during the negotiations. The fact-finder is chosen by the Commission. The appointment of the fact-finder is terminated if the parties later choose to go to arbitration or selection [15] or make or renew an agreement. The parties must report their differences to the fact-finder. [16] The statute gives the fact-finder a wide range of power and jurisdiction with respect to subject matter. The depth of the report of the fact-finder may range from a report, for example, from merely stating the monetary positions of the parties to commenting on the whole situation, naming names and taking a definite stand on the issues. The fact-finder's report may have no effect on the bargaining or it may have a significant impact. The report of the fact-finder is not

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(15) Ibid., S.16

(16) Ibid., S.22

binding on the parties but is made for their advice and guidance.(17) The principal power in the fact-finder's report is that it may be made public and expose to public view the possible unreasonableness of the position of both of the parties thus bringing to bear public pressure on the parties. This may or may not have a significant effect on bargaining. If the parties have not come to an agreement within fifteen days after they have received the report of the fact-finder "the Act" requires that the report be made public.(18) The purpose of this function is to both define the issues and bring public pressure to bear on the parties. The individual fact-finder is crucial here, as is the reaction of the media.(19)

Agreements between parties, excepting clauses preventing strikes or lock-outs, remain in force until new agreement is reached or until sixty days after the release of the fact-finder's report. Exceptions to this are that striking employees shall not be paid, and agreements may not be abrogated at all if arbitration or selection is in progress.

c) Arbitration

The parties may at any time submit their differences to voluntary binding arbitration by an individual or a Board.

The arbitration process is initiated by the parties giving notice to the

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(17) Ibid., S.25

(18) Ibid., S.27(1)&(2)

(19) See "The News Media and the Metro Toronto Teachers' Strike", Bureau of Municipal Research, # 158, April, 1976.

Commission that they have agreed to go to voluntary binding arbitration. In the notice the parties may appoint an arbitrator or may request the Commission to appoint an arbitrator. The parties may agree to submit the matters to a Board of Arbitration and here again notice to the Commission is required. Each party may, in the notice, appoint a member or either or both may ask the Commission to appoint a member or members. The two members once appointed must appoint a Chairman of the Arbitration Board. If the members of the Board are unable to select a Chairman within a specified period of time from their appointment, the Commission is required to appoint the third member.(20)

There can be no strike, lock-out or withdrawal from such process. Arbitrators have wide powers of inquiry, and their award is binding on the parties.(21) Awards may be skeletal, and the details left to the parties. Failure to agree will result in further binding arbitration.

d) Final Offer Selection

This sudden death solution is one of the more innovative aspects of collective bargaining included in "this Act". Here, as in arbitration, the matters in dispute are referred to a third party. The parties may by mutual agreement choose a selector, or, in default of such agreement, the parties may request the Commission to appoint a selector.

The selector has wide powers of investigation.(22) The result, however, is that, with respect to the matters in dispute, the offer of one party will

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(20) Ibid., S.29

(21) Ibid., S.36(2)

(22) Ibid., S.47(2)

be taken in entirety. Thus parties are forced to try and guess the most reasonable solution and extreme bargaining positions become self-defeating. The prerequisite of this procedure is that the parties have agreed to refer all matters remaining in dispute to a selector.(23)

e) Strikes and Lock-Outs

While "the Act" offers this wide variety of resolution techniques, strikes and lock-outs will still occur. The balance of power between the parties is set out by "the Act" in a fashion calculated to minimize disruption. The success of this effort is yet to be determined. No strike or lock-out can occur during the natural life of an agreement or during arbitration or selection. In addition, no strike may occur before notice to negotiate, during the use of a fact-finder and before the passage of fifteen days after the fact-finder's report is made public, until the Board's last offer has been rejected by secret ballot, until the strike vote has been taken by secret ballot, nor until at least, five days notice has been given to the Board and delay is possible.

A strike is widely defined and includes walkouts, slowdowns, work-to-rule campaigns and mass resignations and rotating strikes. Work to rule is an interesting area, in that literale interpretation of a contract becomes here, as in other situations, a breach of that contract. In this case, as far as the teachers' position is concerned, work to rule is doing something less than that which is required by the express or implied terms of the teachers' contract. "Lock-out" includes any refusal to assign work, or any suspension of employment. Both definitions include references to the intention of the parties. Any concerted action to bring pressure on the other party might meet the definitions.

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(23) Ibid., S.38(1)

Peculiar to this legislation is the question of who is in the bargaining unit. Membership in a Branch Affiliate does not mean inclusion in the bargaining unit. Thus principals and vice principals may vote on a strike but may not participate in one. Teachers cannot be fired solely for striking, nor can they be paid, except during the work-to-rule form of strike if no lock-out has occurred.

Unlawful strikes are subject to Ontario Labour Relations Board action under "the Act". The procedure for invoking this intervention involves applying to the Ontario Labour Relations Board which may make appropriate orders and declarations, and which orders and declarations when filed with the Supreme Court of Ontario will be enforced by that Court. This is true of illegal lock-outs as well. Prosecution for contravention of "the Act" is a separate matter, also requiring consent of the OLRB.

It must be emphasized that "the Act" provides for two types of action to facilitate solutions of issues; firstly, "the Act" provides for certain remedial procedures such as fact-finding, final offer selection and arbitration, and secondly, "the Act" provides for prosecution and fines for contraventions of "the Act" such as illegal strike by teachers.

The powers of the Board include the lock-out, the declaration of lock-out, and closing of the schools. Lock-outs may occur only in response to strikes and are intended to prevent the teachers from returning to work if they want to come back. It is important here to remember the special definition of strike. "Striking" teachers may still be teaching. The Board must have considered the Branch Affiliate's last proposal before locking-out.

If only part of a Branch Affiliate strikes the rest can be locked-out to bring pressure on the whole unit. If everyone is out, a "state of lock-out" can be declared preventing the teachers from returning at their own discretion.

Closing of schools is a further step, in which members of non-striking Affiliates may be locked out and staff laid off in the event that the strike makes any operation of the school impractical. This does not mean that the Board could not use the schools for other purposes in that event, for example, the use of parents as substitute teachers.

The final power of the Board is in the provision allowing alteration of the contract after sixty days have elapsed since the fact-finder's report is made public. This power would enable the Board to force a strike or a settlement. Illegal lock-outs are subject to the same consequences as illegal strikes.

f) Terms of the Agreement

Subject to the provisions of "the Act" specifying that any contradiction between an agreement and a statute or regulation is to be resolved in favour of the latter, the scope of the agreement is unlimited. Thus perhaps the Education Act provides some minimum of management rights. However, Boards may find themselves committed to very limiting agreements. While they are not required to allow the teachers to participate directly in policy formulation and administration, they may at least find themselves bound to retain the policies and procedures in operation at the time of the agreement. The legality of this remains to be tested. The problems which emerge from attempted entry of teachers into traditional Board decision making domain is too complex to explore here.

The next consideration after that which may be included is that which must be included. All agreements must be for at least one year, and terminate on August 31st. All terms of an agreement are subject to, or superseded by any contradictory statute or regulation. Collective agreements supersede individual contracts.

Two other major features must be included. If not, they will be deemed by law to be part of the agreement. The first of these is a clause requiring the parties to submit all differences arising out of the operation of the agreement to binding arbitration once the grievance procedures established by the agreement have been exhausted, and the second is that there shall be no strikes or lock-outs during the term of the agreement or any renewal of the agreement.

g) Supervision of Negotiations

"The Act" is also distinguished by the manner in which it sets up a tribunal to deal only with this specific area of labour relations. The Education Relations Commission is a five person tribunal charged with giving effect to "the Act". The Commission is required to be aware of the province wide situation of teachers' collective bargaining, to assist negotiations by providing information, mediators, fact-finders, arbitrators and selectors, to supervise the secret votes, to determine the "good faith" of the parties, and finally, to report to the Cabinet if in their opinion strikes or lock-outs "place in jeopardy the successful completion of courses of study" of students affected.

The Commission reports annually to the legislature. Members are not compellable witnesses in proceedings under "the Act" with respect to information they may obtain in the course of their duties. While the Commission is responsible for determining what constitutes "good faith" in a given bargaining situation, the power to make declarations and orders about strikes and lock-outs, and to allow or prohibit prosecutions for contravention of "the Act" rests with the OLRB. Thus if one party believes another to be acting in bad faith it must go to the Commission for a ruling, to the OLRB for permission to prosecute, and then to the courts for satisfaction.

"This Act" was designed to keep negotiations at the local level, and to minimize disruption by strike. Yet strikes have occurred and will again, and the province has intervened and probably will again to legislate the teachers back to work. The ability of any single piece of legislation, including this one, to withstand the political forces operating in this situation is yet to be demonstrated.

Part III - An Act Respecting Collective Bargaining for Colleges of Applied Arts and Technology (24)

1. General

"The Act" is similar to the "Teachers' Negotiations Act" in many respects. Resolution techniques are virtually identical. The Commission established by "the Act" will apparently be staffed by the same individuals who sit on the Education Relations Commission. While "the Act" may resemble the "Teachers' Negotiations Act", the situation it is set up to control is quite different. The few differences in "the Act" itself could prove to be consequential as well.

There are twenty-two Colleges of Applied Arts and Technology in Ontario. They come under the jurisdiction of the Ministry of Colleges and Universities. The services provided by these institutions are extremely diverse. The colleges have three main objectives: to provide courses beyond or not suited to secondary schools; to provide high school graduates with an alternative to university; and to provide general adult education. They engage in general arts education, pre-employment training, man-power retraining and

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(24) Hereinafter in this Part referred to as "the Act".

other undertakings through a very broad range of courses. The inevitable result of this is that the types of teaching that go on are equally diverse and very difficult to compare with one another. Equating teaching loads is a virtually hopeless task. The teachers have much less solidarity as a group than do those affected by the "Teachers' Negotiations Act". This situation will doubtless change. With this background let us consider the provisions of "the Act".

2. Bargaining Unit

With this question we encounter some of the major features which distinguish "this Act" from the "Teachers' Negotiations Act". The first is that "the Act" applies to the bargaining of both the academic and the support staff. The latter group does not concern us here but the provisions are the same for both. The second is that there are only two bargaining units in the whole system; the faculty, and the support staff. The third is that the bargaining takes place at the provincial rather than the local level. This raises the question of the significance of economic differences on a province wide basis. For example, a salary of $15,000 may be low in Toronto but in Kirkland Lake it may be high. Bargaining on a province wide basis obviously does not recognize these economic differences as compared to bargaining under the "Teachers' Negotiations Act" which is done on a regional basis.

All the academic staff in all the colleges bargain as one group. Membership in the group is limited to full-time teachers, counsellors and librarians. Furthermore, unlike the school teachers, the teachers at the community colleges can choose their own bargaining agent. They are not bound by law to Affiliates or a Federation. Another union could take over from the one now representing the employees. The OLRB supervises this process, and the provisions in "the Act"

are similar to those in the Labour Relations Act which will be discussed in the next chapter.

Across the table from the representatives of the teachers will be the representatives of the Ontario Council of Regents for Colleges of Applied Arts and Technology. This Council was established under the Ministry of Colleges and Universities Act to assist the Minister with respect to the colleges. There are as well Boards of Governors for these colleges. Some of the members of these Boards are appointed to them by the Council. The Boards administer the individual colleges, and are the employers under "the Act". "The Act", however, gives exclusive responsibility for bargaining to the Council, which acts on behalf of all Boards.

3. Procedure

The provisions in "this Act" with respect to giving of notice, open scope of negotiations, "good faith", alternatives for impasse resolution, timing and so on, are virtually identical to those in the "Teachers' Negotiations Act". The sections on negotiations, fact-finding, arbitration and final offer selection are identical to the "Teachers' Negotiations Act".

a) Strikes and Lock-Outs

The strike provisions and definitions are again identical here to those in the "Teachers' Negotiations Act", including the role of the OLRB. The difference is with respect to lock-outs. School Boards can only lock-out striking teachers. In "the Act" the Council may lock-out all the employees in either bargaining unit if there is no agreement in operation, and if some negotiations have taken place, a fact-finder has reported and thirty days

have elapsed, and five days written notice is given. In response to a lawful strike, a college or part of a college may be closed by the employer (Board of Governors) with the Council's permission if the students or equipment are endangered or if operation of the college is impractical. This provision was included as a counter measure to rotating strikes. A rotating strike is where schools are struck in consecutive order for one day at a time.

What Must The Agreement Contain ?

Besides the terms required for agreements under the "Teachers' Negotiations Act" those made under "this Act" require additional provisions due to the difference in the representation situation. The agreements must include recognition of the employee organization as the exclusive bargaining agent for either of the two employee groups under "the Act". Paying of dues and exemption from membership on religious grounds are provided for. There can be no agreement to require union membership as a prerequisite of employment.

b) Supervision

The constitution, duties, and powers of the College Relations Commission are identical to that of the Education Relations Commission. Only the object of their attention and the amount of time required differ.

The OLRB is more extensively involved at this level than at the primary and secondary level because of the representation situation. "The Act" provides for free choice of membership, the application by new bargaining agents for the representation rights, and the determination of who shall represent the employees. No employer-dominated or discriminatory groups may represent employees. The group representing the employees can be changed by the OLRB in the course of the agreement, thus terminating the agreement.

Employer interference is forbidden. The employee representatives have a duty of fair representation of all employees in the bargaining unit, be they members of that employee's organization or not. The whole situation is policed by the OLRB, which has extensive powers of investigation and disposition.

Furthermore the OLRB is responsible for determining who is staff, who is faculty, and who is management. This determines who will be in the bargaining unit, and has many consequences, among them the effectiveness of a strike. (25)

Part IV - Universities and the Labour Relations Act

1. General

As mentioned previously, the Labour Relations Act is set up to deal with industrial labour disputes. It has a full range of provisions controlling the process of unionization of groups of workers, the circumstances under which these groups may be represented by one union or another, what group is "appropriate" as a bargaining unit and so on. Further, "the Act" controls the making and operation of agreements, provides for succession to either side of an agreement, should a business be sold or employees change unions, and controls the strikes and lock-out situations. "The Act" is necessarily more general in its provisions than either the "Teachers' Negotiations Act" or the "Community Colleges Bargaining Act". The powers of the OLRB however are very broad, and its capacity for supervision of labour situations is considerable.

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(25) For an exhaustive treatment of bargaining at this level, see the Board of Arbitration Decision of Mr. Justice Estey, released March 17, 1975.

Faculty unionization has already occurred in some Ontario Universities, and is highly probable in the rest. If this unionization is to proceed under The Labour Relations Act, which is the apparent course of events, certain problems are likely to arise.

2. Bargaining Unit

The OLRB controls the process of certification of bargaining units and their representatives. To be certified a group of employees must have certain elements in common, and must be "adverse" to the employer. Thus questions arise as to the fitness of faculty organizations to be bargaining units, and as to the composition of these units. The employer in the university setting is determined by the statute creating the university. In most cases it will be the Board of Governors.

Many faculty associations have close relations with the "employer", the university. If these are too close the association could be denied certification on the grounds of employer influence. A solution to this is to disband and form anew. In any case, many individuals will be involved in managerial or "confidential" capacities. The OLRB will make the appropriate determinations.

Should all faculty at a university form a bargaining unit ? Should historically distinct faculties such as professionals be allowed to opt out ? Should librarians be included ? These again are difficult questions with arguments to be made on either side.

The situation is complicated by the fact that government finances universities in a not completely predictable fashion, and might not consider itself bound to honour universities' commitments. Thus the possibility of faculty and university negotiating with government arises. The next logical

step is the sort of provincial scheme of the "Community Colleges Bargaining Act".

3. Procedure

The standard procedure for collective bargaining in The Labour Relations Act does not set up to take into account factors such as school years. There are provisions for notice, conciliation and timing. Strikes are limited. Lock-out has the same status as strike and need not be a response. Employees remain such while on strike. There is no fact-finding provision, but the parties could agree to any form of reconciliation provided in the "Teachers' Negotiations Act" and the "Community Colleges Bargaining Act", and the OLRB would probably cooperate.

4. Contents of Agreement

Agreements made under "this Act" include recognition of the exclusivity of the bargaining agent, abstention from strikes or lock-outs during such agreement, arbitration of differences under the agreement after exhaustion of the grievance procedures, and intervention of the Board in such arbitrations.

Agreements may also include other provisions under "the Act". Membership in the union may be required as a prerequisite of employment, but expulsion from the union during the course of employment except for particular unlawful activities cannot be the basis for discharge under an agreement. These provisions would apply to any collective agreement between faculty and university. It is worth noting that an employer can give a group a limited form of certification simply by bargaining with them, although they are not certified by the OLRB.

The outlined procedure and the required contents are standard to collective agreements. The rules governing strikes and lock-outs and other aspects of the collective bargaining process, union representation and operation of agreements would be those standard in any industrial setting. The question is, what faculty concerns will be met by adopting this method of organizing and dealing with management.

Unionization could create solidarity among faculty, or it could be divisive, with each group attempting to form its own unit. It could stifle individualism if all grievances had to go through the union, or could possibly allow those whose complaints had been ignored in the old informal system some form of redress.

Unionization could give the faculty more real power in the determination of university affairs, or it could polarize the current collegial or "shared authority" system of government, in which the lines between faculty and administration are often blurred. The collective bargaining system is after all an adversary situation.

What would collective bargaining in the university do for the two major concerns of salary and job security ? With respect to salary, the distribution of merit pay, and the payment of exceptional salaries to exceptional individuals would present at the very least some drafting problems. Furthermore, the employer may not have full control of the budget, and this would present additional problems.

Concerning job security, collective bargaining has historically had limited success in this field. Collective agreements may provide procedures to be followed when some aspect of the employer's operation is to be phased out or when the economic situation requires layoffs. Thus fairness of some

sort can be engineered, but ultimately the university is as vulnerable to recession as any other undertaking. Government spending cuts will not be hindered by collective agreements.

The university situation is a complex one. Province wide bargaining cannot be compelled, but the Labour Relations Act does provide for a second level of organization where unions and employers each band into Councils to coordinate and simplify bargaining. This may well occur in the university situation. It is even possible, considering the history of faculty involvement in university management, that the ultimate outcome may be faculty and universities bargaining with government.

Part V - The Issues

1. General

The preceding review of the three pieces of legislation affecting teachers' labour relations is both undeniably and inescapably selective. Others reviewing the Acts for other purposes, or perhaps even for the same purpose would choose other items to emphasize. While we have tried to make the various complex procedures established by the three pieces of legislation clear it remains important to refer directly to the Acts as part of any exploration of the issues involved. The three systems of education governed by the legislation are the major contributors to any system of continuing education in Ontario as they are elsewhere in Canada. While both children and adults study and learn under many other auspices in this country, a recent Report[26] by the Organization for Economic Cooperation and Development

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(26) External Examiners Report on Educational Policy in Canada, (OECD), CAAE, Toronto 1976, Paragraph 64.

examining education in Canada comments on the very large role played by educational institutions in all learning in Canada, a contrast apparently with other countries. Also, a recent Report "Demand for Part-Time Learning in Ontario"[27] indicates nearly half of the adult population of the province is either engaged in some form of part-time learning or intends to be. Much of this learning takes place in formal institutions the labour relations of which are governed by these Acts. Therefore, legislation which determines who the teachers will be, and what the nature of their relationship to their institutions will be, is of vastly greater significance than if we were simply concerned with that portion of the educational system concerned with the young.

Legislation governing negotiations between teachers and educational institutions is a relatively recent phenomenon in Ontario. For a very long period of time the province was without such legislation and it was only relatively recently that The Labour Relations Act was actively applied to negotiations between university teaching staff and the university. Negotiations in the elementary and secondary school system for the most part were carried out in a relatively amicable and relaxed fashion and without legislation. Teachers, particularly in small communities, were very much part of the communities whose schools they served. School Boards were many and the variety of relationships involved between teachers, children, parents, and the entire community seemed to preclude the need for, or the relevance of adversarial bargaining.

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(27) Wariewicz: Demand for Part-Time Learning in Ontario, (OECA-OISE), Toronto, 1976.

Therefore, one of the major characteristics to be found in an examination of the impact of these Acts is a great deal of confusion and a basic inexperience with the techniques of collective bargaining. The obvious difficulties in implementing these Acts may therefore, be due as well to that inexperience as the inappropriateness of principles found in The Labour Relations Act relevant to industrial settings and carried over to teachers' negotiations.

It is almost inevitable that such legislation should be introduced at a time when conditions in general within the educational enterprise were already unsettled. Therefore, there have been attempts to find expression through these procedures for many kinds of discontent within the system, some of which are unlikely to find satisfaction by such means.

It will be a matter of time before we will be able to determine the range of exigencies that these Acts can satisfy and what means will have to be found to satisfy the other disputes. In the meantime it is important to be as clear as possible about how these Acts are supposed to work and what some of the implications of the application of those procedures may be.

Our first concern is with the implications of all three Acts for the operation and growth of an educational system which provides access to learning resources for all members of the society. In the case of both the "Teachers' Negotiations Act" and the "Community Colleges Collective Bargaining Act" the issue is one of the degree to which they are able to reflect the fact that it is an educational enterprise that they are intended to govern. In the case of the universities and The Labour Relations Act it is a question of the degree to which existing legislation that has emerged in the context of industrial production can be made to further evolve so as to take account

of the needs of educational institutions. One might hope that the techniques in the "Teachers' Negotiations Act" and the "Community Colleges Bargaining Act", will contribute to the entire spectrum of collective bargaining and that these contributions will show themselves in future amendments of The Labour Relations Act. At the least we have a right to expect that neither they nor The Labour Relations Act will impose practices upon negotiations in educational agencies that will frustrate the purposes of those agencies. For those reasons it is important to attend to both the novel elements in the "Teachers' Negotiations Act" and the "Community Colleges Bargaining Act", and to the implications of applying The Labour Relations Act as it now is to the universities.

Secondly, we are interested in the implications of each one of these Acts for the particular system that it governs. While we are mainly interested in a system of education which supports maximum freedom of movement of students from one system to the other and back again, including the freedom to participate in more than one system at the same time. Nevertheless each system does have its special needs and characteristics which presumably should be reflected in the individual Acts.

Finally, we are interested in the implied relationships between the Acts in terms of how the application of each will affect the application of the other. Within the scope of this publication we can only select some of what appear to us to be the most significant items, and even then explore their implications to a limited degree only. We would be grateful for comment from readers regarding their significant selections and their views of implications.

The principal issues which seem to exist in all three areas covered by the respective Acts, though with slightly different implications for

each one, are as follows: the impact of adversarial forms on collegial systems particularly as reflected in the determination of who shall be included in the bargaining unit; the inclusion of all immediately interested parties in the negotiations; the freedom and scope of choice open to students; and the application of precise job description and work loads in situations that have, at least to date, functioned with a good deal of voluntary commitment.

Adversarial Forms and Collegial Systems

A rapid increase in numbers both of teachers and of educational agencies plus the onslaught of restraints in resources and declining expectations have provided the background for the introduction of, or, in the case of the universities, the increased use of these Acts. It is easy but useless to be sentimental over the possible destruction of aimiable and cooperative atmospheres by the introduction of such legislation. Real lives, real resources and real interests are at stake and procedures for resolving disputes concerning them needed to be found. Nevertheless, it is not necessary that the procedures be the same as have been used elsewhere and caution must be used in applying them. If teaching means "the creation and maintenance of an environment in which learning of a general or precise nature can occur" then it is clear that everyone associated with a teaching agency has a part in the creation and maintenance of that environment. The significance of the janitorial role in the life of a school is one of the oldest and most neglected truths in all education. The implications of this view of teaching and what is reflected by the term "collegial" have been a high interchangeability of roles, the sharing of more than one role concurrently and consecutively, and relatively easy movement from one role to the other. While collegiality has declined as systems and individual teaching units have grown larger, it

has remained an important aspect of education to this day. The imposition of a system that insists that some people are clearly "teachers" (workers) and others clearly "administration" (management) may serve to reduce, almost to non-existence, what "collegiality" remains. Disputes in the elementary-secondary system where principals and vice-principals seem to be both in and out of the bargaining unit,[28] are matched by disputes in the universities over Chairmen and Department Heads. In the case of the latter, The Labour Relations Act appears to allow a variety of patterns to exist at different universities which may in turn allow us to judge the effect of those different patterns on "collegiality" and whether the existence of such "collegiality" is of particular importance to a teaching agency. It can be argued that the relationship that exists between teacher and student, particularly where the student is an adult or near an adult, must have some similarity to the relationships between teachers and administrators and other individuals in the system. Whether the imposition of this new adversarial relationship between the teachers and administrators will come to be reflected in the relationships with students remains to be seen.

It can also be observed that in fact in post-secondary school settings for the most part it has been the students themselves that introduced an adversarial stance which may have laid the foundations for this more recent introduction. However, the introduction of adversarial procedures in all agencies has been made and we shall have to examine the results of learning to live with them. It may be that the compromise reached under the "Teachers' Negotiations Act" which allows participation of some people for some purposes in the bargaining unit, an apparent clear departure from The Labour Relations Act, may turn out to be the best solution in the long run.

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(28) The School Boards and Teachers' Collective Negotiations Act, 1975, S.O. 1975, C.72, S.65.

Immediately Interested Parties

The most pervasive practice in collective bargaining is that only two parties are represented, management and labour. It also appears to be the case under all three Acts concerning educational institutions that bargaining will be conducted between two groups, administration and teachers. There is, however, some considerable question as to whether in these cases there may be other parties deserving equal representation.

In the case of the "Teachers' Negotiations Act" it can be argued that students compelled to attend school and their parents, have interests at least as real and compelling as those of the other two parties. Given the circumstances which force the representatives of the School Board to act like management, it is hard to accept their argument that they do indeed, at the same time, represent the interests of the students or their parents. While education is not compulsory at the college or university level it does not seem entirely reasonable to treat the student in the same way as the purchaser of a product or the recipient of other services. The rhetoric that has accompanied strikes and other disruptions in educational agencies with both sides claiming to have the real interests of the students at heart may simply serve to conceal the fact that, given the procedures in which they are required to engage, neither can have those interests ranked very high among their priorities. It is possible to argue that the students' interests are substantially different from those of the administration and the teachers, and that they have a right to be represented either by their parents, in the case of the very young, or by themselves. In the legal system, there is a provision for including a third party in an action where the inclusion of that party is material to the resolution of the case. At the very least such presence at the bargaining table and at other stages in the proceedings would remove a good deal of the present cant from future

negotiations.

Teacher Security and Student Choice

Teacher security and the freedom of student choice are both real interests but, to a degree, one seems often to be sacrificed to the other. Teachers should not be entirely subject to the vagaries of student choice that manifest themselves from year to year. Long experience with compulsory education and compulsory subject matter has obscured from us the importance of novelty in learning, and of the freedom of choice of the student. This becomes increasingly important with age and maturity. Students need the freedom to choose what they will learn and, to a degree, how. However, teachers are specialized and their work load must not be defined in a way that penalizes them for being underchosen by students at a single moment in time. At the same time, work loads must not be so defined as to reduce substantially student freedom to choose. Such tendencies must be resisted and replaced with reasonable provisions for teachers who are underchosen over a period of time to have access to retraining in order to acquire new skills and knowledge. The "consumer" metaphor that has been recently popular with respect to education should not be pressed that far, either for teachers or for students.

Job Descriptions and Work Loads

The fourth issue common to all three Acts is the matter of "job descriptions" and work loads. Characteristic of all labour contracts are matters relating to equitable distribution of work loads related to classification and rates of pay. Probably no other issue is so frequently a subject of grievance. As Mr. Justice Estey remarked on community college arbitration, the problems indigenous to these matters in educational organizations are considerable, in fact in his opinion, more difficult than

those associated with an airline dispute in which he was involved. The present solutions have largely been to qualify assignments in terms of number of classes taught and the size of the classes, a matter of concern across all three groups of agencies. These solutions serve to further rigidify relationships with students, and tend to reduce in significance or eliminate all teaching relationships which cannot be stated in terms of class contacts. In the elementary and secondary area this may be of less consequence than it is for the colleges and universities where the maximum flexibility in terms of teaching patterns is a necessity. The general tendency of the legislation, therefore, may be to reduce such flexibility at precisely the period in the development of post-secondary education when student roles are being radically redefined and the maximum need for experimentation is present. No doubt imaginative educators will find equivalents for the official categories, but the result may be to drive experimentation in teaching underground as older students with new needs and new learning styles are beginning to increase their demands on the teaching agencies. It would be desirable if the evolving job descriptions and classifications could be accompanied by possible equivalents which could be worked out within the agreement in individual agencies and individual departments.

A further issue in this area, in this case particularly characteristic of elementary and secondary schools, has to do with what have been known as "extra-curricular" activities based on service provided voluntarily by some teachers. A teaching environment requires a good deal of freedom of choice for both teachers and students. Without it all evidence suggests that learning suffers. This involves both flexibility with regard to official subject matter and with respect to voluntary relationships between teachers

and students outside of the prescribed activities. In the times when curriculum was more rigid than it has been recently no observer could fail to notice the difference for some students and teachers between the relationships exhibited within classes and those in the "extra-curricular" activities where both students and teachers were free to choose whether to participate. While, to a degree, schools and parents came to depend upon these voluntary activities there was still a degree of freedom of participation for all parties. Present procedures and their outcomes make little or no provision for such freedoms and, if ways are not found to do so, both those activities and the other relationships in the teaching agencies are bound to suffer.

2. Issues of Specific Acts

There are, as mentioned previously, some special characteristics of each of the pieces of legislation arising out of specific characteristics of the part of the system that they are intended to govern. In some cases, for example the existence of "fact-finders", two of the three Acts share similar characteristics. Those cases will be dealt with in one section only unless there is reason to differentiate their implications.

The School Boards and Teachers' Collective Bargaining Act, 1975.

The "Teachers' Negotiations Act" is easily the most significant both because it set the stage for special legislation in this area of collective bargaining, and because it governs a very large number of individuals in a situation in which a work stoppage would have immediate and far reaching public consequences. One has only to speculate on the consequences of a strike by elementary school teachers for any community in Ontario to grasp the significance of this legislation and the procedures it embodies.

The major issues in this case appear to be the following: timing, the

nature of the bargaining unit, the length of a strike and the discretion of the Education Relations Commission, and the function of "fact-finders".

The importance of this piece of legislation is perhaps reflected by the fact that while The Labour Relations Act with its enormous scope contains 120 sections, the "Teachers' Negotiations Act" governing teachers alone contains 84. It is the result of prolonged committee hearings and perhaps the attempt to make it a model piece of legislation is the reason for the charge that it in fact is more legislation than the situations warranted.

Timing

There are two issues regarding the "Teachers' Negotiations Act" related to time, and to a degree related to each other. First, the arrangement of required procedures make it virtually impossible for teachers to strike before the Fall term of the year in which an existing agreement expires. With respect to elementary schools it is difficult to understand why a strike in the Fall term would be preferable to a strike in the Spring. In the case of secondary schools it could be argued that pressures would be less in the Fall than in the Spring because of the need for students to complete their work in the final grades. Implicit in this view however, is really the notion that somehow time lost in the Fall can be made up in the Spring which in turn suggests that in fact there is a good deal of slack in the school year.

When these implications are related to the other issue concerning time, which is represented by the discretionary power given to the Chairman of the Education Relations Commission to inform the government when, in its opinion, a strike is interfering with the instructional program,[29] a further

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(29) The School Boards and Teachers' Collective Negotiations Act, 1975, C.72, S.61(1)

"61(1) - It is the duty of the Commission ...

(h) to advise the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or (Cont'd/34)

incongruity emerges. If a school system can be closed by strike or lock-out for several weeks or months, in fact for any period of time whatsoever, without interfering with the instructional program, then one must conclude that that time is surplus to the needs of the instructional program, and that the students, at least for instructional purposes, need not be there. Any tax-payer is entitled to wonder why apparently expensive instructional staff are maintained for lengths of time when no instruction is necessary according to the school program. Here we encounter an issue of fundamental significance to the entire operation of the school system as it presently exists. What is apparent is that the "function" of providing custodial services for the young has become of almost equal significance to the "purpose" of providing instruction. At the centre of the conflict between the "function" and the "purpose" are the teachers who are presumably trained and employed to provide instruction but who find themselves instead providing custodial services. It may be that some of the problems inherent in the "Teachers' Negotiations Act", and to a degree in the "Community Colleges Bargaining Act", lie in the fact that they are better designed to deal with custodial function than with the instructional function. At the least they serve to continue to conceal the problems involved in the continuing confusion of the two. If the society as a whole would deal frankly with this issue, it might then be possible to produce both legislation and collective bargaining that was reflective of the true purposes and functions involved.

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(29) (Cont'd)

closing of a school or schools will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the school or schools."

Bargaining Units

Unlike the other two Acts, the "Teachers' Negotiations Act" provides no choice of the bargaining unit. Teachers are required by law to belong to the Teachers' Federation and, by law, the Federation is the representative of the teachers. It is not entirely clear what difference this makes but it is argued that it would be preferable for the operation of the entire system if, as in all other cases, the teachers could choose in an approved way who is to represent them. It forces on the Federation the necessity of being both a professional association and a labour union, a combination of roles which may be detrimental to both interests. So far the Federation appears to have retained many of the attractive characteristics of a professional association, which teachers should have, but it may be that the exigencies of collective bargaining will press very heavily on those attributes. Required membership in the Federation may have served a useful purpose when there was no legislation but it is possible now that required membership, in addition to the legislation, will tend to limit the opportunities for professional freedom and growth.

Fact-Finders

The existence of fact-finders and their function is unique to both the "Teachers' Negotiations Act" and the "Community Colleges Bargaining Act". The purpose is apparently to allow a situation that has reached an impasse to cool without going into total abeyance, and at the same time to provide the possibility of informing the public of the nature of the position of both parties. In theory it is a desirable educational addition to negotiating procedures related to educational agencies. Certainly it deserves further testing. In fact there are a number of difficulties. The choice of the "fact-finder" is crucial to the success of the function. Either an educator, or a lawyer, or someone else entirely may be chosen, and it

appears that the background of the individual can make a substantial difference to the information gathered and to the manner in which it is presented.

Secondly, while the Report is to be made available under specific circumstances, its value depends almost entirely on the press reporting it fully and accurately. There is no guarantee that that will happen. The "fact-finder" therefore may become little more than a delaying tactic with little consequences for the negotiations.

3. The "Community Colleges Bargaining Act"

The "Community Colleges Bargaining Act" is clearly modelled on the "Teachers' Negotiations Act" with several significant alterations. The principal alteration raises the most serious issue. In contrast to the "Teachers' Negotiations Act" in which bargaining is carried on by each Board with its' teachers, allowing the possibility of not only regional responsiveness but also a great variety of experimentation with the procedures and a greater variety of results, bargaining for college staffs is done for the entire province at a time. This seems to allow little or no flexibility in terms of each colleges' supposed responsiveness to its own community. It also provides another difficulty in that few of the administrative and teaching personnel from any college can take part in the negotiating, and therefore have little or no "feel" for the reasons why specific agreements were reached or for their implications in terms of implementation. It is likely then that implementation will be different from college to college, reflecting both the lack of knowledge on the part of those implementing them and the unavoidable need to respond to regional differences. Flexibility in

the colleges, therefore, is likely to be a constant source of difficulty in that it occurs as a violation of the agreement rather than as a legitimate aspect of performance in any particular college. At this moment there seems no reason why negotiations could not go on at each of the twenty-two colleges as they do at each of the 194 School Boards, and, under The Labour Relations Act, at each of the fifteen universities.

4. The Labour Relations Act

Certification of faculty bargaining units is proceeding with some rapidity under The Labour Relations Act in Ontario universities. Problems such as determination of the bargaining unit and the assignment of jobs and classifications are similar to the other two jurisdictions. However, each university under that Act is permitted to work out its own arrangments with respect to these issues, and a number of different solutions have emerged. A unique issue facing the universities is that of separate faculties wishing to bargain separately. Presumably there is nothing in the Act to prevent such an arrangement from occurring. What will be the result within the university remains to be seen.

An issue facing both colleges and universities which has so far presented itself prominently at the university level relates to the use of part-time teachers. Understandably the need for security for those whose entire livelihood comes from teaching is of a different order than for those who teach on a part-time basis but are employed elsewhere. Some countries in the world run their universities almost entirely on the basis of part-time faculty. The tendency in Canada is to subject the security of part-time teachers entirely to the needs of full-time teachers in the sense that part-time teachers will always be the first to go. If part-time teaching

was only an extension of those resources to be found among full-time teachers in the university, then the argument would be indisputable. But that is not always the case. No university can contain in its full-time faculty all the resources that it should reflect in its teaching program. In many cases the part-time teachers bring novel resources to the university and often represent the forerunners of what will, in time, become a full-time resource. To drive them out of the university automatically would be to deprive the university of irreplaceable resources, and therefore to deprive its students of valuable choices of subject matter. Since the itch to teach is incurable, the likelihood is that the part-time teachers will simply set up shop elsewhere and recruit their own students. The result would be the existence of official and unofficial teaching systems on a relatively large scale which would be destructive to both and to the students.

5. Inter-Relationships

Finally we are concerned with inter-relationships between the agencies governed by these Acts. A reasonable system of continuing education envisages various groupings of agencies with a relatively free flow of students among them. In some cases students will make use of more than one group at a time, a practice already wide spread in Ontario. Without some care, the existence of these Acts will serve to lock faculty into their original agencies, and prevent any free flow of faculty among groupings. The decline of free movement of faculty is likely to reduce the movement of students, since if the faculty cannot go to the students the faculty must try to attract the students to them. The result may be a destructive increase of competition between groups of agencies rather than the cooperation that allows each to do something well and leaves the students free to choose.

6. Conclusion

The systematical provision of opportunities for continuing education is as recent a phenomenon in Canada as the legislation we have been exploring. Little is really known regarding the implications for the society of such provision, except that as in all other social endeavours, it will intersect with the law and the legal structure of the society. While, as is always the case with matters of law, real effects will evolve slowly and will be subject to amendment, it is important that we use what we do know about learning and its significance to the society in order to make the intersections as humane and productive for both learning and the legal structure as possible.

In a previous pamphlet we explored the implications of existing laws related to attendance in formal school for the extensions of the educational system upwards into other age groups. In this case we have examined the possible impact of laws that in essence define who the teachers will be and how they will be employed in order to accomplish their teaching. While there is and will always be a great deal of teaching and learning in adult education in Canada which falls outside formally designated programs, agencies and teachers, nevertheless the impact of relationships predominating in those formal situations will be felt everywhere, and will tend to define in one way or another all teaching-learning relationships. Therefore, the significance of continuing to monitor the effects of these Acts from both educational and legal points of view, outside the immediate or specific disputes, are of very great importance. In future pamphlets we will try to continue to do so, and hope that a growing body of interested groups and individuals will participate as well.